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C O N F I D E N T I A L SECTION 01 OF 03 NICOSIA 000985

SIPDIS

DEPARTMENT FOR EUR/SE

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [CY](#) [TU](#)
SUBJECT: ECJ ADVOCATE GENERAL'S OPINION FAVORS GREEK
CYPRIOTS

Classified By: DCM Jonathan Cohen, Reasons 1.4 (b), (d)

¶1. (C) SUMMARY: In a property-related lawsuit with potentially great precedent value, European Court of Justice Advocate General Julianne Kokott on December 18 opined that a judgment of a court in the Republic of Cyprus must be recognized and enforced in other EU member states, even where it relates to land in northern Cyprus. Kokott's opinion concerned the "Orams" case, named after a British couple who had constructed a home on Greek Cypriot-owned property, only to have the original owner sue for (and win) damages in an RoC court. Should the judges of the ECJ follow the AG's recommendations, a British tribunal will be forced to exercise the judgment for damages against the Orams' UK-based assets. Reactions to the opinion were swift to arrive, with T/C contacts depressed and G/C interlocutors excited. Opinion leaders on both sides took more measured stances, however, asserting that Kokott's recommendation was not binding on the European court. The long-term economic ramifications of a pro-G/C decision would be huge in the Turkish Cypriot-administered area heavily dependent on real estate sales and construction and already suffering a building bust (Septel). Nor would an unconditional Greek Cypriot legal victory benefit the ongoing Cyprus settlement negotiations, which in late January is slated begin tackling property matters. END SUMMARY.

In Contrast to Blurry CyProb, Opinion Clear-cut

¶2. (U) A December 18 ECJ press bulletin (forwarded to EUR/SE) carried a summary of Kokott's opinion, and word of its release spread nearly immediately in Nicosia. It contained a bolded disclaimer, however, that the Advocate General's opinion was not binding on the Court. "Advocates General propose to the Court, in complete independence, a legal solution to cases for which they are responsible," it continued, "with judgment to be given at a later date." Nonetheless, legal experts consulted predicted the ECJ bench would not diverge greatly from Kokott's recommendations.

¶3. (U) A key consideration in formulating her opinion was the quirky legal status of the area administered by Turkish Cypriots. Protocol 10 of Cyprus's 2003 Act of Accession to the European Union declared that the EU Acquis was suspended in "the areas of the Republic of Cyprus where the Government of the Republic of Cyprus does not exercise effective control." Kokott opined, however, that the protocol did not exclude the application of an EU regulation meant to allow recognition and enforcement of legal judgments of one EU member state in another member state. Elaborating, the AG suggested that the intent of suspending the Acquis in northern Cyprus was to enable the RoC to accede to the EU and not create a situation in which the government infringed Community law because it could not ensure its application in

northern Cyprus. Nonetheless, she reasoned, the Nicosia court which had found in judgment against the Orams possessed jurisdiction irrespective of the fact the RoC did not exercise control over the Turkish Cypriot-administered area.

All This for Sun and Sand?

¶4. (U) David and Linda Orams purchased land from a Turkish Cypriot seller in the northern Cyprus town of Lapithos (Lapta, in Turkish) in 2002. They constructed a villa and utilize it as a second home. In 2004, original owner Meletis Apostolides, a Greek Cypriot who fled Lapithos in 1974, filed a claim in Nicosia District Court against the Orams, and a court official served papers on the couple shortly thereafter. Neither the Orams nor their attorney challenged Apostolides in person, and in November 2004, the Nicosia court found in favor of the plaintiff. The default judgment ordered the defendants to demolish the home they had constructed, deliver possession of the land to Apostolides, pay damages, occupation charges, and court costs to him, and "refrain from continuing with the unlawful intervention on the land." A subsequent appeal by the Orams to the Cyprus Supreme Court failed to overturn the ruling.

¶5. (U) Recognizing that "Turkish Republic of Northern Cyprus" judicial authorities would not execute the judgment of an RoC court, Apostolides in October 2005 sought its enforcement in the United Kingdom via the European Union's 2001 "Regulation on Jurisdiction and the Recognition and Enforcement of Judgments." That regulation allows one EU

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member state to enforce a court decision of another provided that it is equally enforceable in the originating state (in this case, Cyprus -- where it seemingly is not). Days later, the High Court of England and Wales ordered that the judgment be enforced, only to see the Orams successfully challenge the finding in 2006. Apostolides contested that ruling before the Court of Appeals which, in June 2007, referred the case to the European Court of Justice in Luxembourg. Of primary importance to the British court was the ECJ's opinion as to whether the suspension of the Acquis in northern Cyprus precluded a member state from exercising an RoC court's judgment regarding land in the north.

Preparing for a Verdict in 2009

¶6. (SBU) Lawyers for both Apostolides and the Orams have completed their arguments before the ECJ, and most observers expect a decision to come by June-July 2009. Predictions over a likely ruling have run the gamut, with some wagering the European court will favor the G/C plaintiff in an attempt to increase the scope of EU law and its own jurisdiction. Others, however, believe the ECJ is aware of potential political impact on the present Cyprus settlement process, should it rule in favor of Apostolides.

¶7. (SBU) Word of release of the Advocate General's opinion took Nicosia by surprise, but by late afternoon the text was dominating newscasts and talk radio. Contacts on both sides took predictable positions. Prominent T/C property and human rights attorney Emine Erk voiced great disappointment with Kokott's finding. While it was not binding, she told us December 18, "more likely than not" ECJ judges would reach a similar decision. Erk agreed that the facts of the case and the legal statutes involved were clear-cut in favor of Apostolides. That said, she had hoped the AG would have given greater weight to public policy concerns and opined in favor of the Orams.

¶8. (SBU) Erk saw numerous negative repercussions for the Turkish Cypriot community. The already-bleeding property

market would worsen, as prospective buyers, both foreign and Turkish Cypriot, now had to consider the risk of liens on their overseas assets should they choose to acquire G/C-titled property in the north. Politically, she saw hard-line T/Cs emboldened by the news. They would criticize pro-solution Turkish Cypriot leader Mehmet Ali Talat for failing to defend T/C interests, and perhaps even demand the "government" abandon negotiations with the litigiously "rapacious" Greek Cypriots.

No Surprise -- Mood Brighter in South

¶9. (C) Greek Cypriot contacts greeted the Advocate General's opinion differently. "A win on all counts -- we couldn't hope for a better outcome," former Foreign Minister Erato Marcoullis informed us at a December 18 reception. Her remarks there were echoed by a half-dozen active MFA officials. UK contacts revealed, however, that Foreign Ministry Permanent Secretary (D-equivalent) Nicolas Emiliou had promised that their public posture would not look "triumphalist." Rather, the MFA's media approach would approximate the Brits' -- "this interpretation is only the AG's recommendation and is not binding on the judges, and any formal comment now would be inappropriate." Emiliou's line seems to be holding; no mention of the Orams case appears on the MFA's sometimes inflammatory (and always nationalistic) website, while the RoC's Press/Information Office site carries only a short, factual piece on Kokkot's opinion.

Comment: Bad News for Talat, T/Cs, Economy

¶10. (C) Pro-solution T/C forces, especially "governing" CTP but also leader Mehmet Ali Talat, seem likely early victims of backlash over the AG's opinion. Even before its release, opposition UBP was criticizing Talat for "not sufficiently protecting T/C rights" and not devoting sufficient attention and resources to the Orams case (Talat and his CTP returned fire, claiming that UBP, in power from 1974 to 2005, was responsible for most of the negative international court judgments against T/Cs.) While many T/C voters will see political underpinnings in the opposition's criticisms and thus pay them scant heed, CTP could still be hurt if the AG's

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recommendations cause harm to the key property market.

¶11. (C) If the European Court of Justice eventually rules in favor of Apostolides, all EU citizens in possession of G/C-owned property in northern Cyprus would be susceptible to liens against their assets physically located in other member states as compensation. British High Commission colleagues estimate that UK nationals own 5,000 properties in the "TRNC," and anecdotal evidence indicates large amounts of German- and Dutch-owned land as well. Further, the massive exodus of Turkish Cypriots as a result of the inter-communal troubles means that over 100,000 live in the UK, and many of them maintain second residences in the north. All told, the potential number of "lawsuit-worthy" current possessors of G/C-claimed property is enormous -- and there's no shortage of ready and willing attorneys in the south. Septel will take a detailed look into potential economic costs.

¶12. (C) How might a total G/C victory in Orams vs. Apostolides affect the settlement process? Talat certainly won't abandon the talks as those hard-line UBPers demand -- that would be political suicide, both domestically and for T/Cs' image abroad. We can see the court case altering the sides' postures in preparing for January's property-related discussions, however. G/C nationalists will question why the government should make even minor concessions on property at all, since greater gains might be secured on the litigation track. On the T/C side, there will be great suspicion that

G/Cs, emboldened by the Orams verdict, will never totally drop their lawsuit campaign, even if a political solution on property is reached. A final decision from the ECJ as sweeping as the Advocate's opinion will certainly make an equitable solution to property-related elements of the Cyprus Problem even harder to achieve.

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